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Senators may seek Gates' pledge to promptly report covert actions

By Bill Gertz
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Intelligence experts are divided over the legal question of notifying Congress in a "timely fashion" of all administration covert action programs.

Some experts believe the administration should be allowed to adopt a liberal interpretation of reporting requirements for secret programs. Others argue that "ambiguities" regarding covert action need to be eliminated in order to prevent apparent violations of curbs on covert operations, such as the National Security Council operation to sell arms to Iran.

The question is expected to be raised before the Senate Intelligence Committee today during the opening of confirmation hearings on the nomination of Robert Gates to be the next CIA director.

Some lawmakers have suggested that Mr. Gates formally pledge to the committee that he will keep Congress informed of all covert operations, or agree to resign if asked by the White House to withhold informing the Congress about covert programs.

The administration angered Congress when lawmakers learned that former CIA Director William Casey, in a presidential "finding" released by the White House last month, was forced to withhold notification of congressional intelligence oversight committees about the arms deals with Iran.

Intelligence Committee Vice Chairman William Cohen, Maine Republican, said the administration had not reported the Iran operation by mid-December after the committee had begun its probe of the affair.

In 1984, Mr. Casey made a similar pledge in an effort to assuage panel members angered by Mr. Casey's failure to reveal a CIA-backed operation to mine harbors in Nicaragua.

Committee Chairman David Boren, Oklahoma Democrat, said recently he does not support new legislation restricting covert operations, favoring instead tougher guidelines imposed by the White House.

Morton Halperin, an American Civil Liberties Union attorney who has specialized in law related to intelligence activities, said he believes Mr. Gates should be told in clear terms what the committee expects in terms of reporting.

"Casey made a pledge and it didn't seem to work," Mr. Halperin said. "They should get a clear commitment from him [Mr. Gates] that he knows the requirements and will

carry them out, even if the White House tells him not to."

Mr. Halperin said the law requiring the administration to notify Congress of all significant intelligence activities in a "timely fashion" contains "ambiguities," although the legislative history clearly delineates when reporting can be withheld.

"The authority of the president not to notify Congress was only meant for use in grave situations, where the president's constitutional powers to protect the nation were in danger," he said. "'Timely' does not mean never, and yet the administration never intended to notify Congress" about the Iran operation.

George Carver, a former CIA official, called the idea of demanding that Mr. Gates pledge before the committee "ridiculous" since it would impinge upon the administration's executive branch authority.

"Right now, the law allows for timely notification without specifying what timely means," Mr. Carver said. "It allows for a little bit of wiggle room."

Former CIA Director William Colby agreed. He said a congressional pledge would be an "infringement" on the agency's activities.

"It seems a little extreme," Mr. Colby said. Mr. Gates "should be asked if he will obey the law. I don't think you can micromanage these things."

Other questions related to the Iran-Contra inquiry likely to be raised at Mr. Gates' confirmation hearing are:

- Why did the administration apparently violate its own procedures for authorizing presidential "findings" on secret operations by retroactively approving the Iran arms sales in a Jan. 17, 1986, finding?

- Why didn't Mr. Gates sound the alarm about the possible diversion of Iran arms sales proceeds to Nicaragua's Contra rebels when, according to the committee's Jan. 29 report, he first learned about it in October 1986, a month before it was made public?

- Why did former CIA Deputy Director John McMahon apparently violate agency guidelines by authorizing a CIA shipment of arms to Iran without a written request and after receiving only a telephone call from NSC aide Lt. Col. Oliver North?

Mr. Gates may be questioned by the panel about other intelligence-related concerns, including:

- The status of counterintelligence reforms within the U.S. intelligence community following the so-called Year of the Spy 1986, when more than two dozen espionage cases occurred, including cases that involved FBI, CIA, National Security Agency and Naval Investigative Service intelligence officials.